उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(18)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO.694/2005

APPELLANT (In the custody) — Neel Kumar @ Nilu, S/o Jeevan Lal Satnami, Aged about 35 years, Occupation- Journalist, R/o Village Chatti, P.S. Kurudh, Dist. Dhamtari (C.G.)

Vs

RESPONDENT — State of Chhattisgarh.

Present:
Mr. G.S. Ahluwalia, Advocate for the appellant.
Mr. N.K. Mehta, Panel Lawyer for the respondent-State.

ORAL JUDGMENT

(16th August, 2007)

Per Dhirendra Mishra, J:

This appeal is directed against the judgment of conviction and order of sentence dated 23rd August, 2005 passed by learned Additional Sessions Judge Dhamtari in Sessions Trial No.27/03 whereby learned Additional Sessions Judge has convicted the appellant under Section 376 (1) of the IPC and sentenced to undergo R.I. for 07 years and to pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for one month.

Case of the prosecution, in brief, is that on 6.11.2002 at about 5.0 p.m. when the prosecutrix was proceeding towards the place where मातर

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मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

(festival) was being celebrated in the village, the accused called her in his home on the pretext that she should take medicine for her grand daughter and on her refusal, the accused caught hold of her hand, took her inside the house, committed sexual intercourse with her without her consent and further threatened her that she should not disclose this fact to others or else he would kill her and set her house on fire.

Report of the incident was lodged on 10.11.2002 in the Police Station Kurud on the basis of which offence under Sections 376 & 506B of the IPC was registered. During the trial charge was also framed under Sections 376 (1) & 506B of IPC against the appellant. Learned trial court has convicted and sentenced the appellant under Section 376 (1) of the IPC, as mentioned above. However, the appellant has been acquitted from the charge under Section 506B of the IPC.

Learned counsel for the appellant submits that the prosecutrix is an old lady aged 65 years, she lodged the report after four days of the incident on 10.11.2002 and there is no explanation for the delay. She made material improvements in her statement before the court. The conduct of the prosecutrix is highly unnatural as she did not disclose the incident to anyone for a considerable period. The version of the prosecutrix is also not corroborated by the statement of independent witnesses though she claims to have narrated the incident to PW-5

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Chovalal, PW-8 Dinu & PW-9 Gopaldas, however these witnesses have denied the same. There are discrepancies in the statement of the prosecutrix and other two witnesses namely Motilal (PW-2) and Goverdhan (PW-6). The trial court has erroneously held that the version of the prosecutrix is duly corroborated by the report of Dr. (Smt.) Vandana Vyas (PW-15) though this witness has categorically stated that bleeding found during examination of the prosecutrix was because of infection and carcinoma. Further in Para 9 of her statement the lady doctor has stated that injury described in MLC report could have been caused just before her examination and the prosecutrix was examined after 4 days of the incident.

On the other hand, learned Panel Lawyer for the State has supported the impugned judgment and argued that only on the sole testimony of the prosecutrix conviction can be based. The account given by the prosecutrix is duly corroborated by the statement of Motilal (PW-2) & Goverdhan (PW-6). He further argued that the presence of human semen over the vaginal slides of the prosecutrix, underwear of accused & Sari of the prosecutrix has been confirmed by the Forensic Science Laboratory.

I have heard learned counsel for the parties and perused the impugned judgment.

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मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — ५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Learned trial court has convicted the appellant on the basis of the statement of the prosecutrix and her son Motilal and also on the basis of statement of Dr. (Smt.) Vandana Vyas (PW-15), who examined the prosecutrix and gave her MLC report of Ex.P-13.

The prosecutrix, who has been examined as PW-1, has stated that accused resides at a distance of 100 meter from her house, she reside with her son, daughter-in-law and their children. The incident is of 2nd day of Diwali when मातर was being celebrated in the village. When she was going to witness मातर in the evening at 5 pm, the accused called her to take medicine for her grand daughter, whereupon, she replied that she shall be collecting it while returning, on which the appellant caught her hand and took her inside his home. She requested to be spared with folded hands, however, he took her to the place where animals are tied and thereafter he took her in the prayer room, took out her clothing and mounted on her. He ignored her request and when she tried to shout, he gagged her mouth by inserting cloth. He further threatened her not to disclose this incident to anyone and out of fear she promised that she won't disclose to anyone and thereafter he raped her. Thinking that he had threatened to beat his son and daughter-in-law she did not disclose the incident to them. She washed the clothing worn by her, as the same have become dirty, thereafter, returned to her home and slept in the

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

night. On the next day her son Motilal went to the village Basikhai and returned only on Saturday. She has further stated that on Friday also accused came to their house. The villagers informed her son Motilal about the incident who in turn enquired from her and asked her to accompany him to the Police Station, however, initially she refused and thereafter on being asked by her son, she went to the police station and lodged the report. Apart from other suggestions, the prosecutrix has admitted in her cross-examination that her son Motilal had advanced Rs.10,000/- loan to Goverdhan and accused Neelkumar Verma Doctor stood guarantor for Goverdhan. Goverdhan & accused Neelkumar both have said that they shall be paying Rs.20,000/- after 4-5 months but the said amount was not returned by Goverdhan. She has further stated that both of them are journalists. She has further admitted that her son Motilal had complained Neelkumar that Goverdhan has not returned Rs.20,000/-.

PW-2 Motilal, who is son of the prosecutrix, has deposed that on the day of मातर in the morning he had gone to Village Basikhai with 15-16 other villagers leaving his mother, wife and children in the home and he returned on Friday i.e. on 8th. However, he did not learn about the incident on that date. On Saturday 8-10 persons present in the bus stand were talking about the incident and were accusing him that he is

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मामला क्रमांक..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

not taking any action despite the said incident of rape has occurred in his own family. Thereafter, he returned home. Goverdhan told her on the way that accused has committed rape on her mother in the prayer room. After learning from Goverdhan he did not inquire from anyone and straightaway proceeded to police station Kurud along with his mother & wife and thereafter lodged the report. He tried to ask from his mother but she did not tell anything to him and the report was infact lodged by his mother.

If the statements of above two witnesses is closely examined, it is observed that there are material discrepancies between the versions given by the two witnesses, as Motilal, son of the prosecutrix, has categorically stated that he asked from his mother, but she did not tell anything to him, whereas, in the FIR & court statement the prosecutrix has stated that she narrated the incident to her son on his return from the village Basikhai. There is also a discrepancy in the statement of these two witnesses regarding presence of Motilal in the village on the date of incident, as the prosecutrix claims that her son was present in the village on the date of incident and even on the following day, whereas, her son has stated that he had already gone to Village Basikhai in the morning of the date of incident and returned from there only on Saturday i.e. on 8th.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 7 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

In the light of the above discrepancies, the delay of 4 days in lodging the FIR attains significance. Even otherwise, the offence is alleged to have been committed in the house of accused in which apart from accused his wife and two children were residing. Allegation of the prosecutrix is to be seen and appreciated in the light of the admitted fact that there was a transaction related dispute between the accused and the prosecutrix & her son Motilal (PW-2).

So far as the corroboration from medical evidence as observed by the trial court to the statement of the prosecutrix is concerned, from the statement of Dr. (Smt.) Vandana Vyas (PW-15) in Para 6 to 9, the injury found on the person of the prosecutrix could be a fresh injury, as admitted by the said doctor, and admittedly the prosecutrix was examined after four days of the incident. Further the reason for bleeding from the vagina was as a result of infection or carcinoma, as opined by the doctor. Therefore, the finding of the trial court that version of the prosecutrix is duly corroborated by the medical evidence as also from the statement of Motilal (PW-2) is contrary to the evidence available on record.

So far as the FSL report by which the presence of human semen has been reported is concerned, the original report is not available in the record, even otherwise, the prosecutrix herself has stated that after

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	the incident she had washed her clothes and vaginal slides of the prosecutrix was taken after four days of the incident. Therefore, in these circumstances the presence of human semen in the slides, which were taken after four days of the incident, appears to be highly improbable. On the basis of aforesaid analysis, the conviction of appellant under Section 376 of the IPC and sentence imposed under that sections cannot be sustained. In the result, the appeal filed by the appellant succeeds and the same is allowed. Conviction of appellant under Section 376 (1) of the IPC and sentence imposed under that section are hereby set aside. He is acquitted of that charge and he be set at liberty forthwith, if not required in any other case. Sd/- Dhirendra Mishra Judge Roshan/-	